

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 ANTOINE L. PITTMAN,

12 Petitioner,

13 v.

14 M. E. SPEARMAN, Warden,

15 Respondent.  
16  
17

Case No.: 16cv1585 AJB (BLM)

**(1) ORDER REOPENING CASE AND  
SETTING BRIEFING SCHEDULE  
and**

**(2) NOTICE OF OPPORTUNITY TO  
CONSENT TO MAGISTRATE  
JUDGE JURISDICTION  
(28 U.S.C. § 636(c), F.R.C.P. 73),**

18  
19 On June 20, 2016, Petitioner, proceeding pro se, submitted a Petition for Writ of  
20 Habeas Corpus pursuant to 28 U.S.C. § 2254.

21 In its June 23, 2016 Order, the Court dismissed this case without prejudice because  
22 Petitioner failed to satisfy the filing fee requirement and failed to use a proper form.  
23 Petitioner was instructed that to have this case reopened he had to either pay the filing fee  
24 or provide adequate proof of his inability to pay and file a First Amended Petition no later  
25 than August 22, 2016.

26 Petitioner paid the filing fee on August 3, 2016 and on August 19, 2016, he filed a  
27 First Amended Petition pursuant to this Court's Order. Based on this Court's review of  
28 the First Amended Petition, the Court **ORDERS** that this case be reopened. Further, in

1 accordance with Rule 4 of the rules governing petitions for a writ of habeas corpus  
2 pursuant to 28 U.S.C. § 2254, and upon a preliminary review of the First Amended  
3 Petition, **IT IS ORDERED** that:

4 1. The Clerk of this Court shall promptly (a) serve a copy of the Petition and a  
5 copy of this Order on the Attorney General for the State of California, or her authorized  
6 agent; and (b) serve a copy of this Order on Petitioner.

7 2. Respondent must file a “Notice of Appearance” no later than **September 12,**  
8 **2016**

9 3. If Respondent contends the Petition can be decided without the Court’s  
10 reaching the merits of Petitioner’s claims (e.g., because Respondent contends Petitioner  
11 has failed to exhaust any state remedies as to any ground for relief alleged in the Petition,  
12 or that the Petition is barred by the statute of limitations, or that the Petition is subject to  
13 dismissal under Rule 9 of the Rules Governing § 2254 Cases, or that all of the claims are  
14 procedurally defaulted, or that Petitioner is not in custody), Respondent shall file a  
15 motion to dismiss pursuant to Rule 4 of the Rules Governing § 2254 Cases no later than  
16 **October 28, 2016**. The motion to dismiss shall not address the merits of Petitioner’s  
17 claims, but rather shall address all grounds upon which Respondent contends dismissal  
18 without reaching the merits of Petitioner’s claims is warranted.<sup>1</sup> At the time the motion  
19 to dismiss is filed, Respondent shall lodge with the Court all records bearing on  
20 Respondent’s contention in this regard. A hearing date is not required for the motion to  
21 dismiss.

22 4. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if  
23 any, to the motion no later than **November 28, 2016**. At the time the opposition is filed,  
24 Petitioner shall lodge with the Court any records not lodged by Respondent which  
25 Petitioner believes may be relevant to the Court’s determination of the motion.  
26

27 <sup>1</sup> If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief  
28 alleged in the Petition, the motion to dismiss shall also specify the state remedies still available to  
Petitioner.

1           5. Unless the Court orders otherwise, Respondent shall not file a reply to  
2           Petitioner's opposition to a motion to dismiss. If the motion is denied, the Court will  
3           afford Respondent adequate time to respond to Petitioner's claims on the merits.

4           6. If Respondent does not contend that the Petition can be decided without the  
5           Court reaching the merits of Petitioner's claims, Respondent shall file and serve an  
6           answer to the Petition, as well as points and authorities in support of such answer, no later  
7           than **October 28, 2016**. At the time the answer is filed, Respondent shall lodge with the  
8           Court all records bearing on the merits of Petitioner's claims. The lodgments shall be  
9           accompanied by a notice of lodgment which shall be captioned "**Notice of Lodgment in**  
10          **28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk's Office.**" Respondent  
11          shall not combine separate pleadings, orders or other items into a combined lodgment  
12          entry. Each item shall be numbered separately and sequentially.

13          7. Petitioner may file a traverse to matters raised in the answer no later than  
14          **November 28, 2016**. Any traverse by Petitioner (a) shall state whether Petitioner admits  
15          or denies each allegation of fact contained in the answer; (b) shall be limited to facts or  
16          arguments responsive to matters raised in the answer; and (c) shall not raise new grounds  
17          for relief that were not asserted in the Petition. Grounds for relief withheld until the  
18          traverse will not be considered. No traverse shall exceed ten (10) pages in length absent  
19          advance leave of Court for good cause shown.

20          8. A request by a party for an extension of time within which to file any of the  
21          pleadings required by this Order should be made in advance of the due date of the  
22          pleading, and the Court will grant such a request only upon a showing of good cause.  
23          Any such request shall be accompanied by a declaration under penalty of perjury  
24          explaining why an extension of time is necessary.

25          9. Unless otherwise ordered by the Court, this case shall be deemed submitted  
26          on the day following the date Petitioner's opposition to a motion to dismiss and/or his  
27          traverse is due.

28          ///

1           10. Every document delivered to the Court must include a certificate of service  
2 attesting that a copy of such document was served on opposing counsel (or on the  
3 opposing party, if such party is not represented by counsel). Any document delivered to  
4 the Court without a certificate of service will be returned to the submitting party and  
5 disregarded by the Court.

6           11. Petitioner shall immediately notify the Court and counsel for Respondent of  
7 any change of Petitioner's address. If Petitioner fails to keep the Court informed of  
8 where Petitioner may be contacted, this action will be subject to dismissal for failure to  
9 prosecute.

10           12. Petitioner has consented to proceed before a United States Magistrate Judge.  
11 Respondent must execute and return either a "Consent to Exercise of Jurisdiction by a  
12 United States Magistrate Judge and Order of Reference" or a "Notice of Intent to Proceed  
13 before District Judge" to the Clerk of Court on or before **October 10, 2016**. The parties  
14 are free to withhold consent without adverse substantive consequences. The Clerk of  
15 Court must send the appropriate Southern District forms to Respondent along with this  
16 Order.

17           **IT IS SO ORDERED.**

18  
19 Dated: 8/24/2016

  
Hon. Barbara L. Major  
United States Magistrate Judge